

IN THE SUPREME COURT

APPEAL FROM THE [COURT OF APPEALS AND WAYNE COUNTY CIRCUIT COURT]
[HON. CYNTHIA D. STEVENS, CIRCUIT COURT JUDGE]

* * * * *

RONALD M. NASTAL and
IRENE NASTAL, his wife,

Plaintiffs/Appellees,

v

HENDERSON & ASSOCIATES
INVESTIGATIONS, INC., a
Michigan corporation, NATHANIEL
STOVALL and ANDREW CONLEY,

Defendants/Appellants.

Supreme Court No: 125069

COURT OF APPEALS No: 241200

WAYNE COUNTY CIRCUIT COURT
CASE No. 00-030589-NZ
HON. CYNTHIA D. STEVENS

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APPELLANTS' REPLY TO APPELLEE'S RESPONSE
TO APPELLANTS' BRIEF ON APPEAL
ORAL ARGUMENT REQUESTED
PROOF OF SERVICE

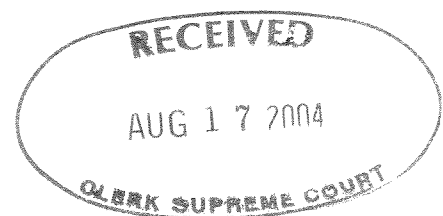


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CONCISE ARGUMENT IN REPLY TO APPELLEE'S RESPONSE

The issue presented to this Court is whether a private investigator's actions, while working within the scope of his employment, can ever rise to the level of stalking as contemplated under Michigan's anti-stalking law codified at MCL 750.411h. Appellants presented four arguments as to why Michigan's stalking laws should not apply to a private investigator's conduct. These arguments are:

1. Michigan's Legislature did not Intend to include a Private Investigator's Conduct as Stalking;
2. Under the definition of Stalking, a Private Investigator's Conduct could not cause a Reasonable Person to feel harassed;
3. A Private Investigator's Conduct does not become Illegitimate simply because the Subject realizes that he is under Surveillance; and
4. The lower courts' decisions, finding that an issue of material fact exists, creates an entirely New Civil Cause of Action that hampers the private investigation industry, along with the businesses that employ private investigators, by subjecting them to Civil Stalking claims.

Appellee's Response tends to gloss over these arguments and instead misdirects this Court by implying that Appellants are incompetent and should be liable because their surveillance activities were discovered by Nastal on more than one occasion. Appellee's discussion of the pertinent issues offers little support for the lower's courts' rulings.

- A. **MICHIGAN'S LEGISLATURE DID NOT INTEND TO CREATE A NEW CIVIL CAUSE OF ACTION COVERING THE SURVEILLANCE ACTIVITIES OF THE PRIVATE INVESTIGATORS AS CONDUCT WHICH MAY BE PROHIBITED UNDER MICHIGAN'S ANTI-STALKING LAWS**

Appellants' purpose in presenting this first question to this Court, regarding the intent of Michigan's Legislature in enacting anti-stalking laws, was to bring perspective

back to this lawsuit. While Appellee's counsel may be commended on their ingenuity in first bringing this civil stalking claim, their lawsuit remains unfounded. Appellants apparently failed to adequately communicate to the lower courts the impact that an adverse ruling will have on Michigan's private investigation industry, as well as other businesses [as evidenced by the *amici curie* briefs filed in support of Appellants], if the Court of Appeals' unpublished decision is allowed to stand. Thus, Appellants believe it is important for this Court to understand the class of people¹ that the Michigan Legislature was intending to protect when it enacted the anti-stalking statutes and that is why it included the Legislative Analysis² for this Court's review.

There is no dispute that legislative history provides a benefit to this Court when a statute is ambiguous and construction of an ambiguous provision becomes necessary. *In re Certified Question (Kenneth Henes Special Projects Procurement, Marketing, & Consulting Corp v Continental Biomass Industries, Inc.)*, 468 Mich 109, 114; 659 NW2d 597 (2003). Appellee's position is that Michigan's Legislature "had the opportunity to include an express exemption for actions by private investigators but did not." The response provides a cursory analysis of 54 jurisdictions across this country noting that some states chose to specifically exclude certain actions or occupations from stalking,

¹ It is important to note that Appellants and Appellee did not have any pre-existing relationship. Unlike the typical stalker-victim relationship, the private investigators were hired by a third party to conduct surveillance on Nastal.

² Appellee's brief would have this Court ignore the Legislative Analysis provided by Appellants. However, it is important to note that the Court of Appeals utilized this same Analysis when it found that the stalking statute was constitutional. *People v White*, 212 Mich App 298, n6 and n7, 536 NW2d 876, (1995). The Court of Appeals recognized that stalking often involves a former spouse, boyfriend or girlfriend who harasses and intimidates an ex-partner. In *White*, the defendant was convicted of aggravated stalking by making 10 or more phone calls a day to a once romantic interest, threatening to kill her and her family.

while other states decided not to exclude these professions.³ Appellee then makes the unsupported conclusion that Michigan's Legislature was aware that it could have excluded private investigators but it chose not to.

Appellee's analysis is wrong. As Appellants thoroughly analyzed in their Brief, the actions of a private investigator fall squarely under the exception to Michigan's anti-stalking law, because it is conduct that serves a legitimate purpose. According to MCL

³ On pages 22-23 of Appellee's response brief, Appellee argues that 11 out of the 54 jurisdictions that have enacted stalking laws, "make no provisions within the applicable statutes for actions that while otherwise fitting the statutory definition, are not 'stalking.'" Appellee is incorrect. Of the 11 jurisdictions cited by Appellee, five actually do have provisions which exclude certain types of conduct from stalking.

Arkansas, at ACA §5-71-229 defines stalking as a course of conduct that **harasses** another, and goes on to **exclude constitutionally protected activity** from the definition of course of conduct. ACA §5-71-229(d)(1)(B)(i). Moreover, §5-71-208 notes that **an affirmative defense to harassment** is if the actor is a law enforcement officer, **licensed private investigator**, attorney, process server, licensed bail bondsman, or a store detective **acting within the reasonable course of his duty while conducting surveillance on an official work assignment**. [Exhibit A, Out of State Statutes].

Florida, at Fla Stat §784.048 defines stalking as any person who willfully **harasses** another person and then defines **harass** as a course of conduct that **serves no legitimate purpose**. Fla Stat §784.048(1)(a). [Exhibit A].

Hawaii, at HRS §711-1106.5, defines stalking as an intent to harass by engaging in a course of conduct **without legitimate purpose**. §711-1106.5(1). [Exhibit A].

Iowa, at Iowa Code §708.11 defines stalking as a course of conduct directed at a specific person which would cause a reasonable person to fear and then notes that course of conduct must be **without legitimate purpose**. §708.11(1)(b). [Exhibit A].

Louisiana, at La RS 14:40.2, defines stalking as wilful, malicious and repeated harassing of another that would cause a reasonable person to feel alarmed. The statute goes on to exclude constitutionally protected activity from the meaning of pattern of conduct. [Exhibit A].

Appellants were unable to find any exceptions for conduct that is not stalking in the six remaining jurisdictions identified by Appellee: the United States, Ohio, Connecticut, Massachusetts, Puerto Rico, and Colorado. However, it is important to point out that these six jurisdictions all have a **specific intent** element to the crime of stalking, verses Michigan and others who only have a **general intent** element. [Exhibit B, Out of State Statutes].

750.411h (1)(d), stalking is defined as a “willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel, terrorized, frightened, intimidated, threatened, harassed, or molested. MCL 750.411h(1)(c) then defines harassment as:

conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

Michigan’s Legislature chose to include a broad category of exceptions, instead of ruling out only specific professions. To the extent that “conduct that serves a legitimate purpose” is not defined [is ambiguous] in the statute, the legislative history/analysis is useful and may be used by this Court in determining whether the conduct of private investigators is the type of conduct that Michigan’s Legislature was intending to prohibit. Appellants ask this Court to find as a matter of law that the surveillance activities of private investigators fall into the legitimate purpose exception of the stalking statute and dismiss Appellee’s cause of action.

B. APPELLEE FAILED TO FULFILL HIS BURDEN OF ESTABLISHING A PRIMA FACIE OF STALKING AS SURVEILLANCE BY PRIVATE INVESTIGATORS ACTING WITHIN THE COURSE OF THEIR PROFESSION WOULD NOT CAUSE A REASONABLE PERSON TO FEEL HARASSED

Appellee’s response argues that it has laid out a *prima facie* case of stalking and that a jury should decide the merits of this lawsuit. Appellee is wrong because he has not satisfied all the elements of a claim for stalking. The stalking definition contains three

elements. First, stalking requires a willful course of conduct involving repeated harassment of another. Second, stalking requires that the harassment would cause a reasonable person to feel harassed. Third, the harassment must actually cause the victim to feel harassed. See People v White, *supra*. It is Appellants' contention that, as a matter of law, the surveillance activities of Henderson did not, and could not rise to the level of stalking as defined under MCL 750.411h because Appellants' surveillance activities⁴ would not cause a reasonable person to feel harassed.

Appellee's response fails to present any legal analysis on this issue. Instead, Appellee focused on nonsensical logic wherein he concedes that as a plaintiff in personal injury lawsuit, he might expect to be observed and then states but because Appellant waited a long time to conduct the surveillance and because the detectives following him wore dark glasses and drove in two vehicles, that suddenly a reasonable person could find this conduct upsetting. Appellee's position, however, is without any legal support. Compare, on the other hand, Appellants's well supported position that as a matter of law,

⁴ Even if this Court does not hold as a matter of law that a private investigator's conduct is excluded from Michigan's anti-stalking laws, the facts of this case do not rise to the level of stalking. The conduct described by Appellee in his Response that would supposedly cause a reasonable person to feel harassed includes: "Plaintiff never knew why he was under surveillance" page 29; he was "followed once by a man wearing dark glasses and again by two men in two cars for an entire day" page 29; the private investigator denied following Nastal when Appellee confronted Appellants, page 29; and when Nastal realized he was being followed he tried to "shake" Appellants and the investigators "chased him" following Nastal in his car and "going through a yellow light and making an illegal right turn" page 30. Furthermore, on at least two occasions, the police confronted Appellants and at no point did the police charge the private investigators with stalking or any other crime. Taking these facts in a light most favorable to Appellee, reasonable minds cannot differ that Appellants actions do not amount to stalking. The reasonableness of an actor's conduct is a question for the fact finder unless, on the basis of the evidence presented, reasonable minds cannot differ. Jackson v Saginaw County, 458 Mich 141 (1998). Appellee does not have any evidence, other than Nastal's feelings, that Appellants actions during their surveillance amounts to stalking.

it is reasonable for a plaintiff who files a personal injury to expect that at some point during the litigation he may be placed under surveillance. A defendant's right to investigate a claim is reasonable. Cruz v State Farm Mut Auto Ins Co, 466 Mich 588, 597; 648 NW2d 591 (2002). Thus, this Court should conclude that the surveillance activities of a private investigator cannot cause a reasonable person who files a personal injury lawsuit to feel harassed and therefore the plaintiff has failed to state a *prima facie* case of stalking. Appellee's failure to provide any opposition to Appellant's position is detrimental to his claim.

Where the Court of Appeals erred was finding that a reasonable person [as a plaintiff in a personal injury or worker's compensation lawsuit] could have feelings of being harassed while under surveillance by a private investigator hired by an insurance company or counsel defending the lawsuit. The answer to this issue is not a question for a jury. It is well settled that businesses have the right to investigate matters that are potential sources of legal liability. Saldena v Kelsy-Hayes, 178 Mich App 230; 443 NW2d 382 (1989). Accordingly, Appellee has not established a *prima facie* case of stalking, and their lawsuit must be dismissed.

C. APPELLANTS' SURVEILLANCE OF APPELLEE, EVEN AFTER IT WAS COMPROMISED, STILL SERVED A LEGITIMATE PURPOSE AND THEREFORE IS EXCLUDED UNDER MICHIGAN'S ANTI-STALKING LAWS

The applicability of Michigan's stalking statute to an individual defendant hinges on the definition of harassment. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose. See People v Kieronski, 214 Mich App 222 (1995). It is appellants' contention that, as a matter of law, the surveillance

activities of Henderson did not, and could not rise to the level of harassment as defined under MCL 750.411h(1)(c) because their surveillance activities serve a legitimate purpose.

Appellee analyzes case law from throughout the country and comes to the generalization “that the conduct of private investigators will sometimes be found to constitute the commission of a tort⁵ while, under other circumstances, it will not.” Appellant’s analysis focused on the finding by these out of state jurisdictions that surveillance work in and of itself is a legitimate activity. On this position, it appears that Appellee does not dispute. The difference is that Appellee feels that “each matter must be decided on its own facts” while Appellants contend that this Court should find as a matter of law that private investigation work, including surveillance, is conduct that serves a legitimate purpose and therefore can never be stalking.

Where Appellee’s analysis goes astray is in presenting to this Court instances which show conduct by private investigators who are committing torts, such as assault or invasion of privacy.⁶ Again, it has been Appellant’s position throughout that as long as private investigators are acting within the scope of their employment, their conduct serves

⁵ It is apparent that in all the research that Appellee did in preparing his response, he also failed to find a single case in any state wherein a private investigator was claimed to have committed the tort of stalking.

⁶ It may be useful for this Court to note some of the facts of some of the cases relied upon by Appellee in support of his position that it is question of fact on whether the actions of a private investigator turn into a tort. For example, in Pinkerton National Detective Agency, Inc v Stevens, 132 SE2d 119 (Ga App, 1963), the defendant detectives would “peep through hedge, slink around the plaintiff’s home, follow her at night, nearly everyday between April and June, 1957. On at least two occasions the detectives came on her premises and peeped in her windows. The detectives also came to the plaintiff’s door pretending to have business with her. In Ellenberg v Pinkerton, 188 SE2d 911 (Ga App, 1972), the detectives trespassed on plaintiff’s property, announced himself as a detective investigating the plaintiff to public officials, and rode up and down the plaintiff’s neighborhood making his presence known to the plaintiff’s neighbors. Appellants’ conduct in this action is essentially docile when compared to these fact patterns.

a legitimate purpose and therefore cannot rise to the level of stalking. On this issue it is necessary to stress the well settled doctrine that an employer is not vicariously liable for torts intentionally or recklessly committed by an employee beyond the scope of his employment. Rogers v J.B. Hunt Transport, 466 Mich 645, 651; 649 NW2d 23 (2002).

Appellee labels the conduct as “bad private detecting” and argues that the actions of a private investigator crossed the threshold from legitimate activity into the realm of harassment and that it is up to a jury to decide if the conduct is stalking. This is where Appellee and the lower courts are wrong. This Court should decide as a matter of law that surveillance activities of private investigators, done within the scope of their employment, can never rise to the level of stalking. To allow this issue to be decided by a jury is to create an entirely new cause of action against private investigators and the businesses that retain these detectives. Appellee labels this position a “straw man” fallacy. However, a more accurate description of this case is a “slippery slope” where Michigan will be the first state in the country to make stalking laws applicable to the profession of private investigators.

Finally, it should be noted that Appellee recognizes that a private investigator may still be liable for some common law tort claims, but complains that none of these remedies were available to Nastal under the specific facts of this case. Appellants would argue that the reason none of the common law tort claims are applicable to Appellee, and instead he had to creatively resort to this new cause of action, is simply because Appellants did not commit any tort in this case. The Michigan legislature, in order to prevent the type of litigation at issue in this case, excluded certain conduct from being subject to anti-stalking

laws. Surveillance easily fits within this exclusion, as the conduct is part of the judicial function of the truth seeking process of litigation.

There is simply no basis for this lawsuit under Michigan law, or the laws in any other state. Accordingly, this Court should rule as a matter of law that serve a legitimate purpose and surveillance does not become an issue of fact simply because the surveillance is compromised on more than one occasion.

D. PUBLIC POLICY CONSIDERATIONS MANDATE A FINDING THAT APPELLANTS' SURVEILLANCE OF APPELLEE DID NOT AND COULD NOT RISE TO THE LEVEL OF STALKING

Appellee asks this Court to ignore Appellant's public policy arguments because a careful private investigator "is not likely to be subject to suit" and that a private investigator who is unable to avoid detection on two or more occasions "may well have made a poor choice of profession and appropriately be subject to sanction." Appellee's position is unfounded. If Appellee decided to bring this lawsuit under such innocuous facts as these, what is to prevent the plaintiff's bar from bringing similar suits in the future. Since the lower courts decided that each case is an issue of fact for a jury, the ramifications of this decision are more than mere "rhetoric."

Consider for example the following plausible scenario. Plaintiff files a negligence claim. During the course of discovery defendant hires a private investigator to conduct surveillance. Now, as analyzed *supra*, Plaintiff should already expect that Defendant will conduct surveillance, so it would not be surprising that a plaintiff discovers that he is being

watched.⁷ It is also logical to assume that either Plaintiff will tell his attorney about the surveillance or that the attorney will inform his client about possibility of surveillance. Since Plaintiff need only discover the surveillance on two occasions to bring a claim, it will not be that difficult given his heightened awareness. All that is left is for Plaintiff to suffer the *subjective* complaints of emotional distress, and what was once a simple negligence claim has now turned into two lawsuits.

In conclusion, as for the far-reaching affects of this claim, this Court need look no further than the present action. Appellee also sued Citizens Insurance, the company that hired Appellants to conduct the surveillance. Thus, Appellee's cause of action is proof positive that the businesses which hire private investigators are also subject to the lower courts' decisions. This is not the intended effect of Michigan's anti-stalking laws. For these reasons, this Court should find as a matter of law that Appellants were engaged in a legitimate activity, even after the investigation was compromised, and that Appellee's claims under Michigan's anti-stalking laws must be dismissed.

RELIEF REQUESTED

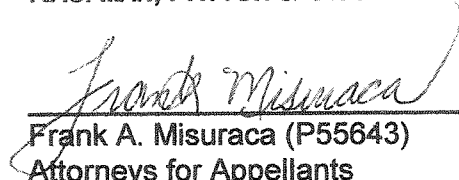
WHEREFORE Defendants/Appellants, HENDERSON & ASSOCIATES, INC., Nathaniel Stovall, and Andrew Conley respectfully pray for an Order overruling the Court of Appeals and the trial court's denial of Defendant's Motion for Summary Disposition regarding Michigan's Anti-Stalking Laws and dismissing this lawsuit in its entirety.

⁷

During the course of discovery of civil actions, it is not uncommon for plaintiff's counsel to inquire, through interrogatories, whether his/her client is under surveillance.

Respectfully Submitted,

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Dated: August 16, 2004

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TOC: Arkansas Code Annotated, Constitution, Court Rules & ALS, Combined > /.../ >
SUBCHAPTER 2. OFFENSES GENERALLY > **§ 5-71-229. Stalking**

Terms: **stalking** (Edit Search)

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A.C.A. § 5-71-229

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*** THIS SECTION IS CURRENT THROUGH THE 2003 LEGISLATIVE SESSION ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 14, 2004 ***

TITLE 5. CRIMINAL OFFENSES
SUBTITLE 6. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, OR WELFARE
CHAPTER 71. RIOTS, DISORDERLY CONDUCT, ETC.
SUBCHAPTER 2. OFFENSES GENERALLY

♦ **GO TO THE ARKANSAS CODE ARCHIVE DIRECTORY**

A.C.A. § 5-71-229 (2003)

§ 5-71-229. Stalking

(a) (1) A person commits **stalking** in the first degree if he purposely engages in a course of conduct that harasses another person and makes a terroristic threat with the intent of placing that person in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury of his or her immediate family and he:

(A) Does so in contravention of an order of protection consistent with the Domestic Abuse Act of 1991, § 9-15-101 et seq., or a no contact order as set out in subdivision (a)(2) (A) of this section, protecting the same victim or victims, or any other order issued by any court protecting the same victim or victims; or

(B) Has been convicted within the previous ten (10) years of:

(i) **Stalking** in the second degree; or

(ii) Violating § 5-13-301 or § 5-13-310; or

(iii) **Stalking** or threats against another person's safety under the statutory provisions of any other state jurisdiction; or

(C) Is armed with a deadly weapon or represents by word or conduct that he is so armed.

(2) (A) A judicial officer, upon pretrial release of the defendant, shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) This no contact order shall remain in effect during the pendency of any appeal of a conviction under subsection (a) of this section.

(C) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and the arresting agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter such orders as are consistent with § 5-2-305.

(3) **Stalking** in the first degree is a Class B felony.

(b) (1) A person commits **stalking** in the second degree if he purposely engages in a course of conduct that harasses another person and makes a terroristic threat with the intent of placing that person in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury of his or her immediate family.

(2) (A) A judicial officer, upon pretrial release of the defendant, shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) This no contact order shall remain in effect during the pendency of any appeal of a conviction under subsection (b) of this section.

(C) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and arresting agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter such orders as are consistent with § 5-2-305.

(3) **Stalking** in the second degree is a Class C felony.

(c) It is an affirmative defense to prosecution under this section whenever the actor is a law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his duty while conducting surveillance on an official work assignment.

(d) For the purpose of this section:

(1) (A) "Course of conduct" means a pattern of conduct composed of two (2) or more acts separated by at least thirty-six (36) hours, but occurring within one (1) year.

(B) (i) Constitutionally protected activity is not included within the meaning of "course of conduct".

(ii) If the defendant claims that he was engaged in a constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence;

(2) "Harasses" means acts of harassment as defined by § 5-71-208; and

(3) "Immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides

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TOC: Arkansas Code Annotated, Constitution, Court Rules & ALS, Combined > /.../ >

SUBCHAPTER 2. OFFENSES GENERALLY > **§ 5-71-208. Harassment**

Terms: **harass and 208** ([Edit Search](#))

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A.C.A. § 5-71-208

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*** THIS SECTION IS CURRENT THROUGH THE 2003 LEGISLATIVE SESSION ***

*** ANNOTATIONS CURRENT THROUGH JANUARY 14, 2004 ***

TITLE 5. CRIMINAL OFFENSES

SUBTITLE 6. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, OR WELFARE

CHAPTER 71. RIOTS, DISORDERLY CONDUCT, ETC.

SUBCHAPTER 2. OFFENSES GENERALLY

♦ **GO TO THE ARKANSAS CODE ARCHIVE DIRECTORY**

A.C.A. § 5-71-208 (2003)

§ 5-71-208. Harassment

(a) A person commits the offense of harassment if, with purpose to **harass**, annoy, or alarm another person, without good cause, he:

(1) Strikes, shoves, kicks, or otherwise touches a person, subjects him to offensive physical contact or attempts or threatens to do so; or

(2) In a public place, directs obscene language or makes an obscene gesture to or at another person in a manner likely to provoke a violent or disorderly response; or

(3) Follows a person in or about a public place; or

(4) In a public place repeatedly insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response; or

(5) Engages in conduct or repeatedly commits acts that alarm or seriously annoy another person and that serve no legitimate purpose; or

(6) Places the person under surveillance by remaining present outside his or her school, place of employment, vehicle, other place occupied by the person, or residence, other than the residence of the defendant, for no purpose other than to **harass**, alarm, or annoy.

(b) Harassment is a Class A misdemeanor.

(c) It is an affirmative defense to prosecution under this section whenever the actor is a law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his duty while

conducting surveillance on an official work assignment.

(d) (1) A judicial officer, upon pretrial release of the defendant, shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(2) This no contact order shall remain in effect during the pendency of any appeal of a conviction under this section.

(3) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and arresting agency without unnecessary delay.

(e) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter such orders as are consistent with § 5-2-305.

HISTORY: Acts 1975, No. 280, § 2909; 1985, No. 711, § 1; A.S.A. 1947, § 41-2909; Acts 1993, No. 379, § 5; 1993, No. 388, § 5; 1995, No. 1302, § 3.

NOTES:

AMENDMENTS. The 1993 amendment, by identical acts Nos. 379 and 388, rewrote (b) and (c); inserted "attorney, process server, licensed bail bondsman" in (d); added (e); and made minor stylistic changes.

The 1995 amendment deleted former (b), redesignating the remaining subsections accordingly; rewrote present (d)(1); substituted "no contact order" for "protective order" in (d)(2); and added (d)(3) and present (e).

CROSS REFERENCES. Terroristic threatening, § 5-13-301.

RESEARCH REFERENCES

UALR L.J. Notes, Constitutional Law -- The Domestic Abuse Act of 1989 -- An Impermissible Expansion of Chancery Jurisdiction. Bates v. Bates, 303 Ark. 89, 793 S.W.2d 788 (1990), 13 UALR L.J. 537.

CASE NOTES

ANALYSIS

✚Civil Remedies.

✚Obscene Language.

✚Separate Offenses.

✚CIVIL REMEDIES.

A plaintiff who alleged that her neighbors harassed her had a criminal remedy under this section and thus was not entitled to injunctive relief against her neighbors. Maxwell v. Sutton, 2 Ark. App. 359, 621 S.W.2d 239 (1981).

✚OBSCENE LANGUAGE.

Conviction for use of profane, violent or abusive language was improper where there was no determination by the trier of fact that the words spoken by the defendant were likely to

arouse to immediate and violent anger the person to whom the words were addressed.
Hammond v. Adkisson, 536 F.2d 237 (8th Cir. 1976) (decision under prior law).

✚ **SEPARATE OFFENSES.**

Uttering vulgar or profane language at the domicile of another and making violent threats against him there with an intent to insult or terrify him were distinct offenses and could not be joined in the same indictment. State v. Lancaster, 36 Ark. 55 (1880) (decision under prior law).

CITED: Bates v. Bates, 303 Ark. 89, 793 S.W.2d 788 (1990); Kirkendoll v. State, 57 Ark. App. 321, 945 S.W.2d 400 (1997).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, article, subchapter, chapter, subtitle, or title.

Source: [Legal](#) > [States Legal - U.S.](#) > [Arkansas](#) > [Statutes & Regulations](#) > **AR - Arkansas Code Annotated, Constitution, Court Rules & ALS, Combined** i

TOC: [Arkansas Code Annotated, Constitution, Court Rules & ALS, Combined](#) > /.../ >
[SUBCHAPTER 2. OFFENSES GENERALLY](#) > **§ 5-71-208. Harassment**

Terms: **harass and 208** ([Edit Search](#))

View: Full

Date/Time: Thursday, August 5, 2004 - 4:05 PM EDT

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Source: Legal > States Legal - U.S. > Florida > Statutes & Regulations > FL - **Florida Statutes, Constitution, Court Rules & ALS, Combined**

TOC: Florida Statutes, Constitution and Court Rules > / . . . / > CHAPTER 784. ASSAULT; BATTERY; CULPABLE NEGLIGENCE > **§ 784.048. Stalking; definitions; penalties**

Terms: **stalking** (Edit Search)

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Fla. Stat. § 784.048

LexisNexis (R) Florida Annotated Statutes

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*** THIS DOCUMENT IS CURRENT THROUGH ALL 2003 LEGISLATION ***
*** ANNOTATIONS CURRENT THROUGH JUNE 18, 2004 ***

TITLE 46. CRIMES

CHAPTER 784. ASSAULT; BATTERY; CULPABLE NEGLIGENCE

♦ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

Fla. Stat. § 784.048 (2003)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

- ♦ LEXSEE 2004 FL. ALS 256 -- See section 3.
- ♦ LEXSEE 2004 FL. ALS 17 -- See section 3.

§ 784.048. **Stalking; definitions; penalties**

(1) As used in this section, the term:

(a) "Harass" means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.

(b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." Such constitutionally protected activity includes picketing or other organized protests.

(c) "Credible threat" means a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person.

(d) "Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(2) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of **stalking**, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury of the person, or the person's child, sibling, spouse, parent, or dependent, commits the offense of aggravated **stalking**, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who, after an injunction for protection against repeat violence or dating violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated **stalking**, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age commits the offense of aggravated **stalking**, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Any law enforcement officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this section.

HISTORY: s. 1, ch. 92-208; s. 29, ch. 94-134; s. 29, ch. 94-135; s. 2, ch. 97-27; s. 23, ch. 2002-55; ♦ s. 1, ch. 2003-23.

NOTES:

AMENDMENTS

The 2003 amendment by s. 1, ch. 2003-23, effective October 1, 2003, added (1)(d); substituted "harasses, or cyberstalks" for "or harasses" in (2), (3), (4) and (5); and in (3) inserted "of the person, or the person's child, sibling, spouse, parent, or dependent."

LexisNexis (R) Notes:

⚡CASE NOTES

⚡TREATISES AND ANALYTICAL MATERIALS

⚡LAW REVIEWS

⚡CASE NOTES

- ⚡ Civil Procedure > Injunctions > Elements
- ⚡ Constitutional Law > Fundamental Freedoms > Overbreadth & Vagueness
- ⚡ Criminal Law & Procedure > Criminal Offenses > Crimes Against the Person > Domestic Offenses
- ⚡ Criminal Law & Procedure > Criminal Offenses > Crimes Against the Person > Harassment
- ⚡ Criminal Law & Procedure > Criminal Offenses > Crimes Against the Person > Stalking & Intimidation
- ⚡ Criminal Law & Procedure > Pretrial Motions > Speedy Trial > Excludable Time Periods
- ⚡ Criminal Law & Procedure > Double Jeopardy > Collateral Estoppel
- ⚡ Criminal Law & Procedure > Evidence > Weight & Sufficiency
- ⚡ Criminal Law & Procedure > Scienter > Knowledge
- ⚡ Criminal Law & Procedure > Jury Instructions > Particular Instructions > Elements of the Offense

Source: Legal > States Legal - U.S. > Hawaii > Statutes & Regulations > HI - Hawaii Revised Statutes Annotated, Constitution, Court Rules & ALS

TOC: Hawaii Revised Statutes Annotated, Constitution, Court Rules & ALS, Combined > /.../ >
CHAPTER 711. OFFENSES AGAINST PUBLIC ORDER > § 711-1106.5. Harassment by stalking

Terms: **stalking** (Edit Search)

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HRS § 711-1106.5

MICHIE'S HAWAII REVISED STATUTES ANNOTATED
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*** STATUTES CURRENT THRU THE 2003 REGULAR AND SPECIAL SESSIONS ***
*** ANNOTATIONS CURRENT THRU DECEMBER 17, 2003 ***

DIVISION 5. CRIMES AND CRIMINAL PROCEEDINGS
TITLE 37. HAWAII PENAL CODE
CHAPTER 711. OFFENSES AGAINST PUBLIC ORDER

✦ GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

HRS § 711-1106.5 (2003)

§ 711-1106.5. Harassment by **stalking**

(1) A person commits the offense of harassment by **stalking** if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in a course of conduct involving pursuit, surveillance, or non-consensual contact upon the other person on more than one occasion without legitimate purpose.

(2) A person convicted under this section may be required to undergo a counseling program as ordered by the court.

(3) For purposes of this section, "non-consensual contact" means any contact that occurs without that individual's consent or in disregard of that person's express desire that the contact be avoided or discontinued. Non-consensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or electronic mail transmission.

(4) Harassment by **stalking** is a misdemeanor.

HISTORY: L 1992, c 292, § 2; am L 2003, c 68, § 2

NOTES:

EDITOR'S NOTE. --1992 Haw. Sess. Laws, Act 292, § 5, provided that this Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before June 29, 1992.

2003 Haw. Sess. Laws, Act 68, § 3, provides: "This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date."

THE 2003 AMENDMENT, effective May 19, 2003, in subsection (1), substituted "engages in a

course of conduct involving pursuit, surveillance, or non-consensual contact" for "pursues or conducts surveillance," deleted former subsection (1)(b), pertaining to a person's reasonable belief, added "on more than one occasion" to the remaining provision in subsection (1), and made related changes; deleted former subsection (2), designating the offense as a misdemeanor or petty misdemeanor, and redesignated former subsection (3) as present (2); and added subsections (3) and (4).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, chapter, or title.

Source: [Legal > States Legal - U.S. > Hawaii > Statutes & Regulations > HI - Hawaii Revised Statutes Annotated, Constitution, Court Rules & ALS](#)

TOC: [Hawaii Revised Statutes Annotated, Constitution, Court Rules & ALS, Combined > /.../ > CHAPTER 711. OFFENSES AGAINST PUBLIC ORDER > § 711-1106.5. Harassment by stalking](#)

Terms: **stalking** ([Edit Search](#))

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Source: Legal > States Legal - U.S. > Iowa > Statutes & Regulations > IA - Code of Iowa
TOC: Code of Iowa > / / > CHAPTER 708. ASSAULT > 708.11 Stalking.
Terms: **stalking** (Edit Search)

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Iowa Code § 708.11

CODE OF IOWA 2003

*** THIS DOCUMENT IS CURRENT THROUGH THE 2004 EDITION (2003 LEGISLATION) ***

TITLE XVI. CRIMINAL LAW AND PROCEDURE
SUBTITLE 1. CRIME CONTROL AND CRIMINAL ACTS
CHAPTER 708. ASSAULT

♦ GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Iowa Code § 708.11 (2003)

708.11 **Stalking.**

1. As used in this section, unless the context otherwise requires:
 - a. *"Accompanying offense"* means any public offense committed as part of the course of conduct engaged in while committing the offense of **stalking**.
 - b. *"Course of conduct"* means repeatedly maintaining a visual or physical proximity to a person without legitimate purpose or repeatedly conveying oral or written threats, threats implied by conduct, or a combination thereof, directed at or toward a person.
 - c. *"Immediate family member"* means a spouse, parent, child, sibling, or any other person who regularly resides in the household of a specific person, or who within the prior six months regularly resided in the household of a specific person.
 - d. *"Repeatedly"* means on two or more occasions.
2. A person commits **stalking** when all of the following occur:
 - a. The person purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to, or the death of, that specific person or a member of the specific person's immediate family.
 - b. The person has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to, or the death of, that specific person or a member of the specific person's immediate family by the course of conduct.
 - c. The person's course of conduct induces fear in the specific person of bodily injury to, or the death of, the specific person or a member of the specific person's immediate family.
3.
 - a. A person who commits **stalking** in violation of this section commits a class "C" felony for a third or subsequent offense.
 - b. A person who commits **stalking** in violation of this section commits a class "D" felony if any of the following apply:

(1) The person commits **stalking** while subject to restrictions contained in a criminal or civil protective order or injunction, or any other court order which prohibits contact between the person and the victim, or while subject to restrictions contained in a criminal or civil protective order or injunction or other court order which prohibits contact between the person and another person against whom the person has committed a public offense.

(2) The person commits **stalking** while in possession of a dangerous weapon, as defined in section 702.7.

(3) The person commits **stalking** by directing a course of conduct at a specific person who is under eighteen years of age.

(4) The offense is a second offense.

c. A person who commits **stalking** in violation of this section commits an aggravated misdemeanor if the offense is a first offense which is not included in paragraph "b".

4. Violations of this section and accompanying offenses shall be considered prior offenses for the purpose of determining whether an offense is a second or subsequent offense. A conviction for, deferred judgment for, or plea of guilty to a violation of this section or an accompanying offense which occurred at any time prior to the date of the violation charged shall be considered in determining that the violation charged is a second or subsequent offense. Deferred judgments pursuant to section 907.3 for violations of this section or accompanying offenses and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section or accompanying offenses shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the offenses defined in this section and its accompanying offenses and can therefore be considered corresponding statutes. Each previous violation of this section or an accompanying offense on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense. In addition, however, accompanying offenses committed as part of the course of conduct engaged in while committing the violation of **stalking** charged shall be considered prior offenses for the purpose of that violation, even though the accompanying offenses occurred at approximately the same time. An offense shall be considered a second or subsequent offense regardless of whether it was committed upon the same person who was the victim of any other previous offense.

5. Notwithstanding section 804.1, rule of criminal procedure 2.7, Iowa court rules, or any other provision of law to the contrary, upon the filing of a complaint and a finding of probable cause to believe an offense has been committed in violation of this section, or after the filing of an indictment or information alleging a violation of this section, the court shall issue an arrest warrant, rather than a citation or summons. A peace officer shall not issue a citation in lieu of arrest for a violation of this section. Notwithstanding section 804.21 or any other provision of law to the contrary, a person arrested for **stalking** shall be immediately taken into custody and shall not be released pursuant to pretrial release guidelines, a bond schedule, or any similar device, until after the initial appearance before a magistrate. In establishing the conditions of release, the magistrate may consider the defendant's prior criminal history, in addition to the other factors provided in section 811.2.

HISTORY: 92 Acts, ch 1179, § 1; 94 Acts, ch 1093, § 4; 98 Acts, ch 1021, § 4; 2002 Acts, ch 1119, § 106

NOTES:

Chapter Notes:

Source: Legal > States Legal - U.S. > Louisiana > Statutes & Regulations > **LA - Louisiana Statutes, Constitution, Court Rules & ALS, Combined**

TOC: Louisiana Statutes, Constitution and Court Rules > / / / > SUBPART B. ASSAULT AND BATTERY (WITH RELATED OFFENSES) > **§ 40.2 Stalking**

Terms: **stalking** (Edit Search)

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La. R.S. 14:40.2

LOUISIANA STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2004 FIRST EXTRA SESSION ***

*** June 2004 Annotations ***

LOUISIANA REVISED STATUTES

TITLE 14. CRIMINAL LAW

CHAPTER 1. CRIMINAL CODE

PART II. OFFENSES AGAINST THE PERSON

SUBPART B. ASSAULT AND BATTERY (WITH RELATED OFFENSES)

♦ GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 14:40.2 (2004)

§ 40.2 Stalking

A. **Stalking** is the willful, malicious, and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress.

Stalking shall include but not be limited to the willful, malicious, and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal or behaviorally implied threats of death, bodily injury, sexual assault, kidnaping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted.

B. (1)(a) Notwithstanding any law to the contrary, on first conviction, whoever commits the crime of **stalking** shall be fined not less than five hundred dollars nor more than one thousand dollars and shall be imprisoned for not less than thirty days nor more than one year. Notwithstanding any other sentencing provisions, any person convicted of **stalking** shall undergo a psychiatric evaluation. Imposition of the sentence shall not be suspended unless the offender is placed on probation and participates in a court-approved counseling which could include but shall not be limited to anger management, abusive behavior intervention groups, or any other type of counseling deemed appropriate by the courts.

(b) Whoever commits the crime of **stalking** against a victim under the age of eighteen when the provisions of Paragraph (6) of this Subsection are not applicable shall be imprisoned for not more than one year, with or without hard labor, fined not more than two thousand dollars, or both.

(2)(a) Any person who commits the offense of **stalking** and who is found by the trier of fact, whether the jury at a jury trial, the judge in a bench trial, or the judge at a sentencing hearing following a jury trial, beyond a reasonable doubt to have placed the victim of the **stalking** in fear of death or bodily injury by the actual use of or the defendant's having in his

possession during the instances which make up the crime of **stalking**, a dangerous weapon or is found beyond a reasonable doubt to have placed the victim in reasonable fear of death or bodily injury, shall be fined one thousand dollars or imprisoned with or without hard labor for one year, or both. Whether or not the defendant's use of or his possession of the dangerous weapon is a crime or, if a crime, whether or not he is charged for that offense separately or in addition to the crime of **stalking** shall have no bearing or relevance as to the enhanced sentence under the provisions of this Paragraph.

(b) If the victim is under the age of eighteen, and when the provisions of Paragraph (6) of this Subsection are not applicable, the offender shall be imprisoned for not less than one year nor more than two years, with or without hard labor, fined not less than one thousand nor more than two thousand dollars, or both.

(3) Any person who commits the offense of **stalking** against a person for whose benefit a protective order, a temporary restraining order, or any lawful order prohibiting contact with the victim issued by a judge or magistrate is in effect in either a civil or criminal proceeding, protecting the victim of the **stalking** from acts by the offender which otherwise constitute the crime of **stalking**, shall be punished by imprisonment for not less than ninety days and not more than two years or fined not more than five thousand dollars, or both.

(4) Upon a second conviction occurring within seven years of a prior conviction for **stalking**, the offender shall be imprisoned with or without hard labor for not less than one hundred eighty days and not more than three years, and may be fined not more than five thousand dollars, or both.

(5) Upon a third or subsequent conviction occurring within seven years of a prior conviction for **stalking**, the offender shall be imprisoned with or without hard labor for not less than two years and not more than five years, and may be fined not more than five thousand dollars, or both.

(6)(a) Any person thirteen years of age or older who commits the crime of **stalking** against a child twelve years of age or younger and who is found by the trier of fact, whether the jury at a jury trial, the judge in a bench trial, or the judge at a sentencing hearing following a jury trial, beyond a reasonable doubt to have placed the child in reasonable fear of death or bodily injury, or in reasonable fear of the death or bodily injury of a family member of the child shall be punished by imprisonment for not less than one year and not more than three years and fined not less than fifteen hundred dollars and not more than five thousand dollars, or both.

(b) Lack of knowledge of the child's age shall not be a defense.

C. For the purposes of this Section, the following words shall have the following meanings:

(1) "Harassing" means the repeated pattern of verbal communications or nonverbal behavior without invitation which includes but is not limited to making telephone calls, transmitting electronic mail, sending messages via a third party, or sending letters or pictures.

(2) "Pattern of conduct" means a series of acts over a period of time, however short, evidencing an intent to inflict a continuity of emotional distress upon the person. Constitutionally protected activity is not included within the meaning of pattern of conduct.

(3) Repealed by Acts 1993, No. 125, § 2.

D. As used in this Section, when the victim of the **stalking** is a child twelve years old or younger:

B

Source: [Legal](#) > [States Legal - U.S.](#) > [Colorado](#) > [Statutes & Regulations](#) > **CO - Colorado Revised Statutes Annotated, Constitution, Court Rules & ALS, Combined**

TOC: [Colorado Revised Statutes Annotated, Constitution, Court Rules & ALS, Combined](#) > / / > [PART 1. PUBLIC PEACE AND ORDER](#) > **18-9-111. Harassment - stalking**

Terms: **stalking** ([Edit Search](#))

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C.R.S. 18-9-111

COLORADO REVISED STATUTES

*** THIS SECTION IS CURRENT THROUGH THE 2003 SUPPLEMENT (2003 SESSIONS) ***

TITLE 18. CRIMINAL CODE
ARTICLE 9. OFFENSES AGAINST PUBLIC PEACE, ORDER, AND DECENCY
PART 1. PUBLIC PEACE AND ORDER

♦ [GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION](#)

C.R.S. 18-9-111 (2003)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

♦ [LEXSEE 2004 Colo. HB 1388 -- See section 11.](#)

18-9-111. Harassment - *stalking*

(1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:

(a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or

(b) In a public place directs obscene language or makes an obscene gesture to or at another person; or

(c) Follows a person in or about a public place; or

(d) Repealed.

(e) Initiates communication with a person, anonymously or otherwise by telephone, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, or computer system that is obscene; or

(f) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

(g) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or

(h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(1.5) As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

(2) Harassment pursuant to subsection (1) of this section is a class 3 misdemeanor; except that harassment is a class 1 misdemeanor if the offender commits harassment pursuant to subsection (1) of this section with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, or national origin.

(3) Any act prohibited by paragraph (e) of subsection (1) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.

(4) (a) The general assembly hereby finds and declares that **stalking** is a serious problem in this state and nationwide. Although **stalking** often involves persons who have had an intimate relationship with one another, it can also involve persons who have little or no past relationship. A stalker will often maintain strong, unshakable, and irrational emotional feelings for his or her victim, and may likewise believe that the victim either returns these feelings of affection or will do so if the stalker is persistent enough. Further, the stalker often maintains this belief, despite a trivial or nonexistent basis for it and despite rejection, lack of reciprocation, efforts to restrict or avoid the stalker, and other facts that conflict with this belief. A stalker may also develop jealousy and animosity for persons who are in relationships with the victim, including family members, employers and co-workers, and friends, perceiving them as obstacles or as threats to the stalker's own "relationship" with the victim. Because **stalking** involves highly inappropriate intensity, persistence, and possessiveness, it entails great unpredictability and creates great stress and fear for the victim. **Stalking** involves severe intrusions on the victim's personal privacy and autonomy, with an immediate and long-lasting impact on quality of life as well as risks to security and safety of the victim and persons close to the victim, even in the absence of express threats of physical harm. The general assembly hereby recognizes the seriousness posed by **stalking** and adopts the provisions of this subsection (4) and subsections (5) and (6) of this section with the goal of encouraging and authorizing effective intervention before **stalking** can escalate into behavior that has even more serious consequences.

(b) A person commits **stalking** if directly, or indirectly through another person, such person knowingly:

(I) Makes a credible threat to another person and, in connection with such threat, repeatedly follows, approaches, contacts, or places under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship; or

(II) Makes a credible threat to another person and, in connection with such threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or

(III) Repeatedly follows, approaches, contacts, places under surveillance, or makes any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that

person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress. For purposes of this subparagraph (III), a victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress.

(c) For the purposes of this subsection (4):

(I) Conduct "in connection with" a credible threat means acts which further, advance, promote, or have a continuity of purpose, and may occur before, during, or after the credible threat;

(II) "Credible threat" means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his or her immediate family or of someone with whom the person has or has had a continuing relationship. Such threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.

(III) "Immediate family" includes the person's spouse and the person's parent, grandparent, sibling, or child; and

(IV) "Repeated" or "repeatedly" means on more than one occasion.

(5) Where a person commits **stalking** under paragraph (b) of subsection (4) of this section, the following shall apply:

(a) A person commits a class 5 felony for a first offense.

(a.5) For a second or subsequent offense, if such offense occurs within seven years of the date of a prior offense for which such person was convicted, the offender commits a class 4 felony.

(b) If, at the time of the offense, there was a temporary or permanent protection order, injunction, or condition of bond, probation, or parole or any other court order in effect against such person prohibiting the behavior described in paragraph (b) of subsection (4) of this section, such person commits a class 4 felony. In addition, when a violation under subsection (4) of this section is committed in connection with a violation of a court order, including but not limited to any protection order or any order that sets forth the conditions of a bond, any sentence imposed for such violation pursuant to this subsection (5) shall run consecutively and not concurrently with any sentence imposed pursuant to section 18-6-803.5 and with any sentence imposed in a contempt proceeding for violation of the court order. Nothing in this paragraph (b) shall be construed to alter or diminish the inherent authority of the court to enforce its orders through civil or criminal contempt proceedings; however, before a criminal contempt proceeding is heard before the court, notice of the proceedings shall be provided to the district attorney for the district of the court where the proceedings are to be heard and the district attorney for the district of the court where the alleged act of criminal contempt occurred. The district attorney for either district shall be allowed to appear and argue for the imposition of contempt sanctions.

(6) A peace officer shall have a duty to respond as soon as reasonably possible to a report of **stalking** and to cooperate with the alleged victim in investigating such report.

HISTORY: Source: L. 71: R&RE, p. 469, § 1. C.R.S. 1963: § 40-9-111.L. 76: (1)(e) R&RE and (1.5) added, p. 561, §§ 1, 2, effective May 21.L. 81: (1)(e) amended, p. 981, § 6, effective May 13.L. 90: (1)(d) repealed, p. 926, § 11, effective March 27.L. 92: (2) amended and (4) to (6) added, p. 413, § 1, effective July 1.L. 93: (5)(a) amended and (5) (a.5) added, p. 1703, § 1, effective July 1.L. 94: IP(1), (1)(g), and (1)(h) amended, p. 1463,

§ 3, effective July 1; (4) and (5) amended, p. 2018, § 1, effective July 1; (5)(b) amended, p. 1719, § 14, effective July 1.L. 95: (5) amended, p. 1258, § 26, effective July 1.L. 97: (4)(b) (I) amended, p. 1540, § 4, effective July 1.L. 99: (2), (4), and (5) amended, pp. 795, 792, §§ 4, 1, effective July 1.L. 2000: (1)(e) and (3) amended, p. 693, § 4, effective July 1.L. 2003: (5)(b) amended, p. 1014, § 23, effective July 1.

Editor's note: (1) Amendments to subsection (5) in House Bill 94-1045 and House Bill 94-1126 were harmonized.

(2) Section 33 of chapter 139, Session Laws of Colorado 2003, provides that the act amending subsection (5)(b) applies to orders entered and offenses committed on or after July 1, 2003.

Cross references: For provisions concerning harassment by debt collectors or collection agencies, see § 12-14-106.

ANNOTATION

Gravamen of this offense is the thrusting of an offensive and unwanted communication on one who is unable to ignore it. People v. Weeks, 197 Colo. 175, 591 P.2d 91 (1979).

Defendant's spitting on the tenant constituted "physical contact" within the meaning of subsection (1)(a). People v. Peay, 5 P.3d 398 (Colo. App. 2000).

Subsection (1)(d) held unconstitutionally vague. This subsection violates the due process clause because it contains no limiting standards to define what conduct is prohibited and, conversely, what conduct is permitted. People v. Norman, 703 P.2d 1261 (Colo. 1985).

Former subsection (1)(e) was facially overbroad and therefore unconstitutional. Bolles v. People, 189 Colo. 394, 541 P.2d 80 (1975).

Subsection (1)(e) held not to be unconstitutionally vague because the statute defined the offense with particularized standards to limit the scope of the offense and the presence in the statute of the words "annoy" and "alarm", by themselves, were not sufficient to render the statute unconstitutionally vague. People v. McBurney, 750 P.2d 916 (Colo. 1988).

Subsection (1)(g) is facially overbroad and unconstitutionally vague and there are no limiting constructions that will render it constitutional. People v. Smith, 862 P.2d 939 (Colo. 1993).

A defendant lacks standing to challenge the constitutionality of a statute as facially overbroad when the defendant's alleged speech is precisely the type of activity which the telephone harassment statute was designed to regulate. People v. McBurney, 750 P.2d 916 (Colo. 1988).

This section and § 18-3-207, which classifies criminal extortion as a felony, address separate and distinct crimes and the classification of such offenses have a rational basis in fact and are reasonably related to legitimate government interests. People v. Czernyynski, 786 P.2d 1100 (Colo. 1990).

Subsection (1)(h) is not unconstitutionally vague on its face. People ex rel. VanMeveren v. County Court, 191 Colo. 201, 551 P.2d 716 (1976).

The limited scope of the statute brings it within permissible limitations on free expression. People ex rel. VanMeveren v. County Court, 191 Colo. 201, 551 P.2d 716 (1976).

Source: Legal > States Legal - U.S. > Ohio > Statutes & Regulations > OH - Ohio Statutes, Constitution, Court Rules & ALS, Combined | i

TOC: Ohio Statutes, Constitution, Court Rules & ALS, Combined > / . . . / > STALKING > § 2903.211. Menacing by stalking

Terms: **stalking** (Edit Search)

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ORC Ann. 2903.211

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*** CURRENT THROUGH LEGISLATION APPROVED THROUGH MARCH 29, 2004 ***
*** ANNOTATIONS CURRENT THROUGH DECEMBER 31, 2003 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2903. HOMICIDE AND ASSAULT
STALKING

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ORC Ann. 2903.211 (2004)

§ 2903.211. Menacing by **stalking**

(A) (1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.

(2) No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to commit a violation of division (A)(1) of this section.

(B) Whoever violates this section is guilty of menacing by **stalking**.

(1) Except as otherwise provided in divisions (B)(2) and (3) of this section, menacing by **stalking** is a misdemeanor of the first degree.

(2) Menacing by **stalking** is a felony of the fourth degree if any of the following applies:

(a) The offender previously has been convicted of or pleaded guilty to a violation of this section or a violation of section 2911.211 of the Revised Code.

(b) In committing the offense under division (A)(1) or (2) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under division (A)(2) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

(c) In committing the offense under division (A)(1) or (2) of this section, the offender

trespassed on the land or premises where the victim lives, is employed, or attends school, or as a result of an offense committed under division (A)(2) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school.

(d) The victim of the offense is a minor.

(e) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

(f) While committing the offense under division (A)(1) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (B)(2)(f) of this section does not apply in determining the penalty for a violation of division (A)(2) of this section.

(g) At the time of the commission of the offense, the offender was the subject of a protection order issued under section 2903.213 or 2903.214 of the Revised Code, regardless of whether the person to be protected under the order is the victim of the offense or another person.

(h) In committing the offense under division (A)(1) or (2) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or as a result of an offense committed under division (A)(2) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises.

(i) Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

(3) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing by **stalking** is either a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

(C) Section 2919.271 of the Revised Code applies in relation to a defendant charged with a violation of this section.

(D) As used in this section:

(1) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages or receipt of information or data through the use of an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a

"pattern of conduct."

(2) "Mental distress" means any of the following:

(a) Any mental illness or condition that involves some temporary substantial incapacity;

(b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

(3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in section 2133.21 of the Revised Code.

(4) "Emergency facility person" is the singular of "emergency facility personnel" as defined in section 2909.04 of the Revised Code.

(5) "Public official" has the same meaning as in section 2921.01 of the Revised Code.

(6) "Computer," "computer network," "computer program," "computer system," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(7) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

(8) "Third person" means, in relation to conduct as described in division (A)(2) of this section, an individual who is neither the offender nor the victim of the conduct.

(E) The state does not need to prove in a prosecution under this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in division (D)(2)(b) of this section.

(F) (1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section.

(2) Division (F)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Division (F)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section

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TOC: [General Statutes of Connecticut > / . . . / > PART XIV BREACH OF THE PEACE, CREATING A PUBLIC DISTURBANCE, INTIMIDATION BASED ON BIGOTRY OR BIAS, STALKING, DISORDERLY CONDUCT, OBSTRUCTING FREE PASSAGE AND HARASSMENT > § 53a-181d. Stalking in the second degree: Class A misdemeanor.](#)

Terms: **stalking** ([Edit Search](#))

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Conn. Gen. Stat. § 53a-181d

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* THIS DOCUMENT IS CURRENT THROUGH THE JAN. 6, 2003 SPECIAL SESSION *

TITLE 53a. PENAL CODE
CHAPTER 952 PENAL CODE: OFFENSES
PART XIV BREACH OF THE PEACE, CREATING A PUBLIC DISTURBANCE, INTIMIDATION
BASED ON BIGOTRY OR BIAS, **STALKING**, DISORDERLY CONDUCT, OBSTRUCTING FREE
PASSAGE AND HARASSMENT

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Conn. Gen. Stat. § 53a-181d (2003)

§ 53a-181d. **Stalking** in the second degree: Class A misdemeanor.

(a) A person is guilty of **stalking** in the second degree when, with intent to cause another person to fear for his physical safety, he wilfully and repeatedly follows or lies in wait for such other person and causes such other person to reasonably fear for his physical safety.

(b) **Stalking** in the second degree is a class A misdemeanor.

HISTORY: (P.A. 92-237, S. 2.)

NOTES:

Notes supplied by the State of Connecticut

See Sec. 54-1k re issuance of protective order in **stalking** cases.

Title Notes:

*Although title has no definition of "extreme indifference to human life", extensive charge on meaning of "recklessly" coupled with the evidence adequately indicate nature of acts qualifying. 176 Conn. 227, 236. Cited. 180 Conn. 557, 559. Cited. 201 Conn. 505, 515. Sec. 53a-1 et seq. cited. 209 Conn. 75, 92. Cited. 211 Conn. 258, 275.

Cited. 9 Conn. App. 686, 691, 720-723, 725, 726. Penal code cited. Id.

Cited. 35 Conn. Supp. 519, 520. Sec. 53a-1 et seq. cited. 40 Conn. Supp. 498, 500.

Chapter Notes:

*Cited. 191 Conn. 73, 77. Cited. 192 Conn. 571, 573. Cited. 202 Conn. 629, 639, 641. Cited. 204 Conn. 630, 636. Cited. 209 Conn. 75, 93.

Person convicted, pursuant to chapter 359 (368p), to be sentenced in accordance with this chapter where no inconsistency results. 31 Conn. Supp. 350.

Part Notes:

*Annotations to former section 53-174:

An assault with "intent to drown and suffocate" not within this statute. 5 Conn. 330. A breach of the peace under this section may be committed without assault or battery. 29 Conn. 72. Assailing party with scurrilous and abusive language is a "mocking" under this section. 34 Conn. 279. Effect of provision concerning libelous publications. 90 Conn. 98. Elements necessary where offense is tumultuous behavior. 75 Conn. 205. Interrupting a school under former statute. 26 Conn. 607; 28 Conn. 232; 82 Conn. 321. Does not define breach of peace but merely specifies certain ways of committing it; it may be committed in other ways. 126 Conn. 5. Not necessary that information contain an allegation that publications were maliciously made if there is no mention of privilege. 148 Conn. 208. Not necessary to prove a breach of the peace to support a conviction of libel. *Id.* Cited. 97 Conn. 138; 124 Conn. 557; 145 Conn. 124; 147 Conn. 704; 148 Conn. 77; 153 Conn. 208; 157 Conn. 226. Cited. 162 Conn. 383. Cited. 165 Conn. 288, 291, 294.

Annotations to former statute prohibiting acts calculated to intimidate: to threaten and use means to intimidate a company against its will to abstain from keeping in its employ workmen of its own choice is within the prohibition of the statute. 55 Conn. 70, 71; 92 Conn. 168. Statute as applied to strike. 77 Conn. 237; 79 Conn. 13; *id.*, 416. Necessary allegations of information; intimidation need not result. 80 Conn. 614; 81 Conn. 696. Notice by bricklayers' union to contractors and employers that members would not work if nonunion men were employed held no violation of this statute on particular facts. 92 Conn. 168. Does not require proof of assault and battery. No specific intent is essential. It is sufficient that the acts intentionally committed cause serious disquietude on the part of those in the vicinity. 140 Conn. 586. Cited. 142 Conn. 605.

Cited. 5 Conn. Supp. 507; 22 Conn. Supp. 361; 23 Conn. Supp. 294; *id.*, 344; *id.*, 455; 24 Conn. Supp. 354; 25 Conn. Supp. 483; 27 Conn. Supp. 128. "Peace" defined; it is not the law that there is no breach of the peace unless public repose is disturbed. Numerous abusive and indecent telephone calls held breach of the peace. (Now see Sec. 53a-183.) Where minor defendant was committed to reformatory for violation of this section, there should have been presentence investigation and report as defendant could have been detained therein for as much as two years. 26 Conn. Supp. 504, 505. Petitioner by habeas corpus petition challenged her commitment for indefinite term for breach of peace, when Sec. 17-360 provides maximum sentence of one year for this misdemeanor and sentence ordered modified. 28 Conn. Supp. 9.

Cited. 2 Conn. Cir. Ct. 200; *id.*, 611; 3 Conn. Cir. Ct. 224, 227; 4 Conn. Cir. Ct. 68; *id.*, 90; *id.*, 413, 416; *id.*, 476, 477; *id.*, 538. Abusive and threatening language uttered over telephone constituted violation. 2 Conn. Cir. Ct. 288. (Now see Sec. 53-174a.) Defendant's contention that conduct involving one or two persons and occurring in an isolated place could not constitute breach of the peace was without merit. 2 Conn. Cir. Ct. 648. Time is not an essential element of crime of breach of peace unless date is material to the defense. *Id.*, 649. Mere presence of defendant as inactive companion would not make him an accessory to breach of peace. 3 Conn. Cir. Ct. 138. Breach of peace may be found if alleged offensive act is of such a character that it naturally tends to cause serious disquietude on part of those in

vicinity where act is likely to exercise its malignity. 3 Conn. Cir. Ct. 423. "Provokes contention" does not require that blows be struck. 3 Conn. Cir. Ct. 550, 552. Statute provides its own definition of "mocking". Id. Although defendant did not take part in assault, he is guilty under statute because everyone is party to an offense who directly or indirectly counsels or procures any person to commit the offense or do any act forming a part thereof. 3 Conn. Cir. Ct. 610, 613. Defendant properly charged with breach of peace when he violated curfew imposed by mayor of New Haven when riotous conditions existed in the city. 5 Conn. Cir. Ct. 22. Right to constitutional procedural safeguards applicable to charges of misdemeanor. Id., 178. Evidence of defendant magazine salesman's forcible amorous assault on complainant housewife in her home warranted his conviction of crime of breach of peace by assault. Id., 186. Statute does not define crime of breach of peace but merely specifies certain ways of committing it and defendant garage owner's threatened assault on complaining witness in his shop warranted his conviction under it. Id., 298. Constitutionality of this statute properly raised by demurrer upon ground it is unconstitutionally vague. Demurrer overruled as language used in statute is plain and unambiguous and legislative intent clearly expressed. Id., 384. Cited. Id., 311; 517. Section does not define crime of breach of peace but merely specifies certain ways of committing it. It may be committed in ways other than those specified. Offensive acts must be of such character that they tend naturally to cause serious disquietude on part of those in vicinity. 5 Conn. Cir. Ct. 583. Evidence of prior altercation between defendant and victim's son which led immediately to attack on father, admissible on question of motive. 5 Conn. Cir. Ct. 607. There was sufficient evidence on which trial court found defendant had committed assault and battery and appeal court cannot retry case. 6 Conn. Cir. Ct. 14. Defendant in resisting unlawful arrest was not guilty of breach of peace. 6 Conn. Cir. Ct. 42. Cited. 6 Conn. Cir. Ct. 90, 402, 403, 404, 405, 431.

Annotations to former section 53-175:

Disorderly conduct arrest proper where defendant refused to answer police officer's questions and gathered a crowd by his shouting. 157 Conn. 485.

Conduct to be disorderly under this section must take place in a public place. 23 Conn. Supp. 430. Constitutionality upheld; disorderly conduct involves annoyance to or interference with someone in a public place by conduct which is offensive or disorderly. 24 Conn. Supp. 7. What constitutes disorderly conduct; sit-in demonstrations in waiting rooms of business office, although nonabusive, nonviolent and nonboisterous, held to be disorderly conduct. 24 Conn. Supp. 337.

Cited. 4 Conn. Cir. Ct. 57; id., 533. Defendant was correctly charged with disorderly conduct when he violated curfew order of mayor of New Haven imposed to prevent continuance of riots in that city. 5 Conn. Cir. Ct. 22. Waiving Viet Cong flag is expression of ideas and not incitement to violence under statute. Lower court will not rule unconstitutional laws of long regarded social importance and a public policy of wide general support. 6 Conn. Cir. Ct. 402 et seq.

Annotations to former section 53-183:

"Permit" covers not only a voluntary turning loose, but also failure to use reasonable care to restrain. 104 Conn. 499. Need not be confined by halter. 136 Conn. 440. To establish a violation it must be shown that the animals were at large on the highway without a keeper either by the voluntary act of the defendant or by reason of his negligent failure to restrain them. 146 Conn. 470.

Owner of horse not required to respond in damages where horse was at large on the highway because the barnyard gate had been cut by a person unknown to the owner. 10 Conn. Supp. 384.

Annotations to former section 53-186:

Cited. 104 Conn. 499.

Cited. 44 Conn. App. 84. Held to be not unconstitutionally vague. 46 Conn. App. 661.

Constitutionality of statute under attack for vagueness or overbreadth discussed. 43 Conn. Supp. 46-48, 50, 51, 53, 55, 56, 58, 60-64, 67, 69-71, 74-76.


Subsec. (a):

Cited. 44 Conn. App. 84. Cited. 46 Conn. App. 661.


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CASE NOTES

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 [Criminal Law & Procedure > Evidence > Impeachment Evidence > Impeachment by Prior Conduct & Conviction](#)

 [Evidence > Relevance > Prior Acts, Crimes & Wrongs](#)

 [Criminal Law & Procedure > Criminal Offenses > Crimes Against the Person > Stalking & Intimidation](#)

1. In a prosecution for **stalking** in the second degree in violation of Conn. Gen. Stat. § 53a-181d, the State was not permitted to impeach defendant's credibility with a prior misdemeanor conviction for harassment, but could use the conviction on cross-examination of a defense witness called to give opinion or reputation evidence of defendant's peaceful character. *State v. Jackson*, 1998 Conn. Super. LEXIS 1251 (Conn. Super. Ct. Apr. 7 1998).


2. Where defendant was charged with two counts of **stalking** in the second degree in violation of Conn. Gen. Stat. § 53a-181d, defendant's motion in limine to exclude evidence under Conn. Prac. Book § 42-15 of her prior conviction for second degree harassment was granted in that the court would not admit the fact of conviction as part of any prior misconduct evidence. Defendant was permitted to present character witnesses to give opinion or reputation evidence concerning defendant's peaceful character and the state was permitted to cross-examine concerning whether the witness knew or had heard of defendant's conviction for harassment. *State v. Jackson*, 1998 Conn. Super. LEXIS 1251 (Conn. Super. Ct. Apr. 7 1998).

 [Criminal Law & Procedure > Evidence > Impeachment Evidence > Impeachment by Prior Conduct & Conviction](#)

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character. State v. Jackson, 1998 Conn. Super. LEXIS 1251 (Conn. Super. Ct. Apr. 7 1998).

4. Where defendant was charged with two counts of **stalking** in the second degree in violation of Conn. Gen. Stat. § 53a-181d, defendant's motion in limine to exclude evidence under Conn. Prac. Book § 42-15 of her prior conviction for second degree harassment was granted in that the court would not admit the fact of conviction as part of any prior misconduct evidence. Defendant was permitted to present character witnesses to give opinion or reputation evidence concerning defendant's peaceful character and the state was permitted to cross-examine concerning whether the witness knew or had heard of defendant's conviction for harassment. State v. Jackson, 1998 Conn. Super. LEXIS 1251 (Conn. Super. Ct. Apr. 7 1998).

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Citation: **18 USC 2261A**

18 USCS § 2261A

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*** CURRENT THROUGH P.L. 108-279, APPROVED 7/22/04 ***
*** WITH A GAP OF P.L. 108-276 ***

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I. CRIMES
CHAPTER 110A. DOMESTIC VIOLENCE AND STALKING

♦ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

18 USCS § 2261A (2004)

§ 2261A. Interstate stalking

Whoever--

(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or

(2) with the intent--

(A) to kill or injure a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

(B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to--

(i) that person;

(ii) a member of the immediate family (as defined in section 115) of that person; or

(iii) a spouse or intimate partner of that person,

uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii),

shall be punished as provided in section 2261(b).

HISTORY:

(Added Sept. 23, 1996, P.L. 104-201, Div A, Title X, Subtitle F, § 1069(a), 110 Stat. 2655; Oct. 28, 2000, P.L. 106-386, Div B, Title I, § 1107(b), 114 Stat. 1498.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

2000. Act Oct. 28, 2000, substituted this section for one which read:
"§ 2261A. Interstate stalking

"Whoever travels across a State line or within the special maritime and territorial jurisdiction of the United States with the intent to injure or harass another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury (as defined in section 1365(g)(3) of this title) to, that person or a member of that person's immediate family (as defined in section 115 of this title) shall be punished as provided in section 2261 of this title."

NOTES:**CROSS REFERENCES**

Sentencing Guidelines for the United States Courts, 18 USCS Appx § 2A6.2.

RESEARCH GUIDE**Am Jur:**

31A Am Jur 2d, Extortion, Blackmail, and Threats §§ 49, 50, 55.

Law Review Articles:

Holt. Interstate stalking ban survives constitutional challenge in Sixth Circuit. 38 Trial 90, July 2002.

INTERPRETIVE NOTES AND DECISIONS

Even if crime of interstate stalking required government to prove that defendant possessed intent to injure victim prior to crossing state line, same evidence supporting interstate kidnapping count would be sufficient to sustain jury's verdict on interstate stalking count. United States v Young (2001, CA4 Va) 248 F3d 260, 56 Fed Rules Evid Serv 50, cert den (2001, US) 150 L Ed 2d 771, 121 S Ct 2617.

Evidence was sufficient to prove intent under 18 USCS § 2261A, where defendant made telephone calls to his former wife's father's residence threatening death and damage to his property almost immediately after crossing state line to reside in same community as former wife, causing her to reasonably fear for her family's safety, even though his most severe assaults and threats towards her did not occur until two months later. United States v Al-Zubaidy (2002, CA6 Mich) 283 F3d 804.

Six-level sentencing enhancement and upward departure were clearly appropriate, since interstate stalking defendant's conduct showed his intent to carry out his threats to murder stalking victim's children. United States v Rose (2003, CA8 Minn) 315 F3d 956, reh den, reh, en banc, den (2003, CA8) 2003 US App LEXIS 2912.

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TOC: United States Code Service - Titles 1 through 50 > / . . . / > CHAPTER 110A. DOMESTIC VIOLENCE AND STALKING > § 2261A. Interstate stalking

Citation: **18 USC 2261A**

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TOC: Annotated Laws of Massachusetts, Constitution, Court Rules & ALS, Combined > /.../ > CHAPTER 265. CRIMES AGAINST THE PERSON > § 43. Stalking.

Terms: **stalking** (Edit Search)

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ALM GL ch. 265, § 43

ANNOTATED LAWS OF MASSACHUSETTS
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*** WITH THE EXCEPTION OF CHAPTER 149 ***

PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 265. CRIMES AGAINST THE PERSON

✦ GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY

ALM GL ch. 265, § 43 (2004)

§ 43. **Stalking.**

(a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall be guilty of the crime of **stalking** and shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars, or imprisonment in the house of correction for not more than two and one-half years or both. Such conduct, acts or threats described in this paragraph shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device including, but not limited to, electronic mail, internet communications and facsimile communications.

(b) Whoever commits the crime of **stalking** in violation of a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to sections eighteen, thirty-four B, or thirty-four C of chapter two hundred and eight; or section thirty-two of chapter two hundred and nine; or sections three, four, or five of chapter two hundred and nine A; or sections fifteen or twenty of chapter two hundred and nine C or a protection order issued by another jurisdiction; or a temporary restraining order or preliminary or permanent injunction issued by the superior court, shall be punished by imprisonment in a jail or the state prison for not less than one year and not more than five years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be

suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this subsection.

(c) Whoever, after having been convicted of the crime of **stalking**, commits a second or subsequent such crime shall be punished by imprisonment in a jail or the state prison for not less than two years and not more than ten years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of two years.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this section.

(d) [Stricken]

HISTORY:

1992, 31; 1996, 298, §§ 11, 12; 1997, 238, §§ 1, 2

NOTES:

EDITORIAL NOTE--

Source: Legal > States Legal - U.S. > Puerto Rico > Statutes & Regulations > English > **PR - Laws of Puerto Rico Annotated, Constitution, Court Rules & ALS, Combined**
TOC: Laws of Puerto Rico Annotated > / / > CHAPTER 251. CRIMES AGAINST THE PERSON
> **§ 4013. Definitions**
Terms: **stalking** (Edit Search)

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33 L.P.R.A. § 4013

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TITLE 33. PENAL CODE
SUBTITLE 3. PENAL CODE OF 1974--SPECIAL PART
CHAPTER 251. CRIMES AGAINST THE PERSON

♦ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

33 L.P.R.A. § 4013 (2002)

§ 4013. Definitions

For the purposes of §§ 4013-4026 of this title, the following terms shall have the meaning stated below:

(a) **Stalking.** Means a pattern of behavior by which a constant or repeated vigilance, or physical or visual proximity, is constantly or repeatedly maintained on a certain person; unwanted verbal or written communications are sent repeatedly to a specific person; repeated acts of vandalism are directed to a specific person; repeated harassment through words, gestures or actions intended to disturb, pursue or annoy the victim or members of his/her family. The constant behavior pattern must occur uninterruptedly for a period of time of not less than fifteen (15) minutes.

(b) **Repeatedly.** Means two (2) or more occasions.

(1) **Family.** Means: Spouse, son, daughter, father, mother, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, male or female cousin of the victim; or other relative by consanguinity, or affinity who is part of the family nucleus.

(2) A person who lives or has formerly cohabited with the victim as a couple; or has been involved in a relationship as a paramour or lover.

(3) A person who resides or has resided in the same dwelling as the victim, for at least six (6) months before the acts constituting **stalking** are evident.

(d) **Intimidate.** Means any repeated action or word that instills terror in the animus of a prudent and reasonable person, to the effect that [he/]she, or any member of the family could suffer harm, personally, or of [his/]her property, and/or exert moral pressure on the animus of the person to perform an act against [his/]her will.

(e) **Restraining order.** Means any written order under the seal of a court whereby the measures are dictated to an offender to abstain from incurring or performing certain acts that constitute **stalking**.

(f) **Respondent.** Means any person against whom an order of protection is requested.

(g) **Petitioner.** Means any person who requests a restraining order.

(h) *Court*. Means the Trial Court of the General Court of Justice.

(i) *Police officer*. Means any member or officer of the Police of Puerto Rico; or a municipal policeman duly trained and accredited by the Police of Puerto Rico.

HISTORY: HISTORY: Aug. 21, 1999, No. 284, § 3, eff. 90 days after Aug. 21, 1999.

NOTES:

NOTES:

PURPOSE. Section 2 of Act Aug. 21, 1999, No. 284, provides:

"This legislation reaffirms the public policy of the Government of Puerto Rico to counter any type of expression of violence that threatens the values of peace, security, dignity and respect that are hoped to be achieved for our society.

"**Stalking** is a manifestation of violence, which can induce fear in the peace of mind of a prudent and reasonable person of suffering physical harm to him/her, or his/her property, or a member of his/her family. The purpose of this Act [§§ 4013-4026 of this title] is to create the necessary mechanisms to criminalize, penalize, and allow the opportune intervention by the police in view of such acts, to adequately protect the persons who are victims of **stalking**, thus preventing possible injury to them, their property, or the members of their family."

STATEMENT OF MOTIVES. Aug. 21, 1999, No. 284.

TITLE. Section 1 of Act Aug. 21, 1999, No. 284, provides: "This Act [§§ 4013-4026 of this title] shall be known as the "Act Against **Stalking** in Puerto Rico'."

SEPARABILITY. Section 17 of Act Aug. 21, 1999, No. 284, provides: "Should any provision contained in this Act [§§ 4013-4026 of this title] be found unconstitutional, said finding of unconstitutionality shall not impair the remaining provisions therein."

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